

layering certification is to ensure that any HUD assistance provided to the owner of a project pursuant to a Restructuring Plan is no more than is necessary to permit the project to continue to house tenants with an income mix comparable to the income mix of the project before the Restructuring Plan is implemented, after taking into account other Government assistance described in section 102(b)(1) of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545(b)(1)). This section does not limit a PAE from presenting for approval a Restructuring Plan that includes project reconfiguration (e.g., conversion of efficiency units to one-bedroom units) where necessary to meet the needs of the community, provided the conditions of § 401.452 are also met.

(c) *Relationship to section 102(d) of HUD Reform Act.* HUD is not required to perform a separate subsidy layering analysis under section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545(d)), section 911 of the Housing and Community Development Act of 1992 (42 U.S.C. 3545 note), or § 4.13 of this title for any HUD assistance that is included in the Restructuring Plan. HUD will adopt the PAE certification under this section if a HUD certification otherwise would be required under section 102(d).

(d) *Certification under existing HUD guidelines.* If the PAE has delegated authority from HUD to make section 102(d) subsidy layering certifications in accordance with section 911 of the Housing and Community Development Act of 1992, the PAE may comply with this section by using a procedure substantially similar to the procedure described in the Administrative Guidelines published on December 15, 1994 (59 FR 64748), or any subsequent procedure adopted by HUD to implement section 911.

(e) *Other procedures.* If the PAE does not have the delegated authority described in paragraph (d) of this section, the PAE must submit to HUD for approval proposed procedures for making the subsidy layering certification under this section. Any procedures must conform to the procedures de-

scribed in paragraph (d) of this section to the extent feasible and appropriate.

§ 401.500 Required notices to third parties and meeting with third parties.

(a) *General.* The PAE must solicit, and document the consideration of, tenant and local community comments. As a minimum, the notices described in paragraphs (b), (c) and (f) of this section, in form and substance acceptable to HUD, must be provided. The PAE may require the owner to give the notices if permitted by HUD.

(b) *Notice of intent to restructure and consultation meeting.* (1) This notice must include at a minimum:

- (i) The project, including its name and FHA Project Number;
- (ii) The responsible PAE and contact person, including the address and telephone number;
- (iii) The owner's notice of intent to restructure through the Mark-to-Market Program; and
- (iv) The date of expiration of the project-based assistance.

(2) This notice must state how comments may be provided to the PAE regarding any of the following: the physical condition of the property, whether the rental assistance should be tenant-based or project-based, any proposed sale or transfer of the property, and other matters regarding the property and its management. The notice must establish the date, time, and place for a public meeting to be held no sooner than 20 days and no later than 40 days following the date of this notice. The public may provide written comments up to the date of the meeting.

(c) *Access to Restructuring Plan.* (1) The PAE must make the Restructuring Plan available to the parties identified in § 401.501 at least 20 days before the PAE submits the Restructuring Plan to HUD (subject to any Federal, State, or local laws restricting access to any information in the Plan or related documents).

(2) As soon as the PAE determines that the Restructuring Plan is substantively complete and ready for submission to HUD, notice of the following must be provided:

- (i) The location of the Plan for inspection and copying; and

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(ii) The date, time, and place of a public meeting to be held at least 10 days before the PAE submits the Plan to HUD.

(3) When the PAE gives notice under this section, it must make the Plan available during normal business hours at the management office of the project, or if there is no such office, at another location specified by the PAE that is convenient to the tenants.

(d) *Meeting to discuss the Restructuring Plan.* After the PAE has given notice under this section and at least 10 days before the PAE submits the Plan to HUD, the PAE must conduct a public meeting to obtain comments on the substantively completed Plan. The PAE must accept written comments through the date of the meeting.

(e) *Disposition of comments.* The PAE must document and provide to HUD with the Restructuring Plan a summary of the disposition of all public comments.

(f) *Notice of completion of Restructuring Plan.* (1) Within 10 days after the owner executes the Restructuring Commitment, notice must be provided that describes the completed Restructuring Plan and Restructuring Commitment. The PAE must make the completed Restructuring Plan and Restructuring Commitment available during normal business hours to the public at a place described in paragraph (c)(3) of this section, subject to Federal, State, or local laws restricting access to any information in any of these documents.

(2) Within 10 days after the PAE determines that the Restructuring Plan will not move forward for any reason, notice must be provided that describes the reasons for the failure to move forward and the availability of tenant-based assistance to tenants under § 401.602(c) if project-based assistance is not renewed.

§ 401.501 Delivery of notices and recipients of notices.

(a) *Whom must the owner or PAE notify?* The PAE must notify, or ensure that the owner notifies, each tenant and any tenant organization for the project, and post a notice in the project, for all notices required by §§ 401.500 and 401.502.

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(b) *Whom must the PAE notify?* The PAE must notify:

(1) The Chief Executive Officer of the unit of local government and the Executive Director of the Public Housing Authority with jurisdiction over the project location;

(2) The recipient of any Outreach and Training Grant (OTAG); or Intermediary Technical Assistance Grant (ITAG) for the project location; and

(3) Other appropriate neighborhood representatives and other affected parties.

§ 401.502 Notice requirement when debt restructuring will not occur.

(a) *PAE responsibility.* If an owner of an eligible project requests a renewal of a section 8 contract without a Restructuring Plan under § 402.4, HUD or the PAE must notify, or ensure that the owner notifies, all parties identified in § 401.501 of the request and of:

(1) The availability (as provided in § 401.500(c)(3) of the following information:

(i) The owner evaluation of physical condition (OEPC) required by § 402.6(a)(3);

(ii) The comparable market rent analysis required by § 402.6(a)(2), but without addresses (or other specific information indicating location) for comparable properties; and

(iii) The items identified in § 400.500(b)(1)(i), (ii) and (iv); and

(2) A procedure for submitting public comments regarding this information.

(b) *Expense and profit/loss information.* The PAE should remove project expense, property valuation, and profit and loss information before disclosing any information obtained by the PAE directly from an owner or project manager, unless the owner has given written consent to disclosure with that information included.

(c) *Consideration of comments.* The PAE must consider written public comments on the information listed in paragraph (a) of this section, if the comments are submitted within 30 days after giving notice under paragraph (a), and document the consideration for HUD. No public meeting is required.